IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

General Insurance Employees Association vs. General Insurance Corporation of India & Ors.

(D.B.C.Special Appeal No.297/93)

Date of Judgment : 19th July, 2006

PRESENT

HON'BLE THE CHIEF JUSTICE MR.S.N.JHA
HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

REPORTABLE

Mr.N.M.Lodha, for the appellant.
Mr.M.S.Singhvi, for the respondents.

BY THE COURT :(PER HON'BLE MOHAMMAD RAFIQ,J.)

The General Insurance Employees Association(for short "the Association") has filed this appeal against the judgment dated 25th May, 1993 passed by the learned Single Judge dismissing their writ petition. In the writ petition, the appellant challenged the orders Exhibits 2 and 3 (both dated 1st August, 1988) by which the respondents no. 4 to 6 were promoted to the post of Assistant Administrative Officer(in short "the AAO") in Delhi Tariff Region of United India Insurance Company on the premise that these promotions were against the policy framed by the General Insurance Corporation of India(in short GIC) for Supervisory,Clerical and Subordinate staff.

We have heard Shri N.M.Lodha learned counsel appearing for the appellant and Shri M.S.Singhvi learned counsel who represents the respondents no. 1 to 3. Respondents no. 4 to 6 whose promotions have been assailed in these proceedings have chosen not to appear in spite of service of notices on them.

Apart from merits of the case, we have heard arguments of both the learned counsels on the question of maintainability of petition filed by the Association precisely on the question whether an employees' association can in writ proceedings challenge promotion granted to certain employees even if they are not its members and have come on transfer from another region. Number of judgments delivered by the Hon'ble Supreme Court and of this Court have been cited from both sides regarding maintainability of the writ petition by an employees' association. We need not dwell upon this issue in detail because we propose to decide this appeal on merits. While we have no doubt about the locus standi of an employees' association to file writ petition on behalf of its members-employees for redressal of their grievances in appropriate cases, we have serious doubt about the maintainability of writ petition at the instance of an employees' association questioning promotion granted to certain employees simply because they are not its members. Grant of promotion to some and refusal thereof to other is an issue which concerns the employees concerned and if the affected employee chooses not to challenge non-grant of promotion to him, it would mean that he has no grievance and in such a situation why an employees' association should be permitted to challenge the same by initiating legal proceedings on his

behalf.

The appellant filed a writ petition challenging the promotion granted to the respondents no. 4 to 6 by two different orders (both dated 1st August, 1988). The case of the appellant in the writ petition was that GIC has framed a policy of promotion for Supervisory, Clerical and Subordinate Staff, 1986 which applied to all its subsidiary insurance companies. According to para 5 of the said Policy, the cadre of AAO was to be treated as entry-cum-promotional grade. Appointment to this cadre would be made by promotion as well as by direct recruitment and Paras 30 and 31 of the Policy respectively prescribe procedure therefor. Para 11 of the Policy provided that promotion to the cadre of AAO shall be made within the region and if employees who have been included in the ranking list of the said region but have not been promoted due to lack of vacancies available in their region may be allowed an option to fill up the vacancies of AAO in another region due to non-availability of successful promotees in that region. Para 14 of the Policy provides that Promoting Authorities shall be nominated region-wise. Para 15 of the Policy provided that the vacancies for the year shall be worked out in the month of January every year keeping in view the organisational growth for the current year and the anticipated vacancies too. Para 30 of the Policy provided the conditions of eligibility for promotion and further provided that promotion shall be based on seniority, qualification, work record and interview . Para 31 of the Policy provided that graduate and post graduate employees with at least 50% (40% in case of SC/ST employees) marks in any degree examination holding requisite F.F.I.I. or F.C.I.I. Diplomas shall

be allowed to appear for not more than 3 occasions in the entire period of service for Competitive Examination for departmental staff and those securing at least 60% marks (50% in the case of SC/ST employees) shall be considered for promotion to the cadre of AAO.

The case of the appellant in the writ petition was that in view of para 15 of the Policy , 36 vacancies of AAO were determined in the year 1987. Out of 36 vacancies, 8 were reserved for Scheduled Castes and Scheduled Tribes and thus 28 vacancies were available for general category. Out of these 28 vacancies, 19 vacancies were to be filled up as per the conditions laid down in para 30 of the Policy and remaining 9 vacancies were to be filled up according to the provisions contained in para 31 of the Policy. Since 5 vacancies of reserved quota under para 30 remained unfilled , they were also required to be filled up according to para 31 of the Policy. It was submitted that according to para 44 of the Policy, Promoting Authority while preparing the ranking list was required to include 20% candidates in reserve for contingency. When the ranking list was prepared in the year 1988, two persons were included in reserve for contingency in the list meant for general category whereas two persons were named in reserve for contingency in the list of SC/ST candidates. The petitioner placed on record both these lists vide Annexures 2 and 3 (both dated 1st August, 1988). With the help of these lists he has argued that 9 persons have been promoted under para 31 of the Policy against the general quota whereas 2 persons namely Shri K.S.Porwal and Shri C.Upadhyay were kept in reserve so that if any of the 9 candidates in the ranking list fails to join then these persons can be

promoted. Similar position was reflected in the list of SC/ST candidates where 8 persons were included in the ranking list whereas two persons namely Shri R.C.Verma and Shri N.R.Bholecha were placed in the reserve. It has been stated that respondents no. 4 and 5 have been taken on transfer from Madras Tariff Region even though case of Shri K.S.Porwal and Shri C.Updhayay shown at serial No. 10 and 11 in ranking list of general category in reserve were available in the Delhi Tariff Region itself. Similarly, Shri K.Kalimani(respondent no. 6) belonging to Madras Tariff Region yet he has been promoted on the post of AAO in Delhi Tariff Region though Shri R.C.Verma and Shri N.R.Bholecha of Delhi Tariff Region were available in ranking list of SC/ST category in reserve. It was argued that as per para 11 of the Policy, a person from another region could be promoted in Delhi Tariff Region only on account of non-availability of persons in Delhi Tariff Region. Since, the eligible persons were available in Delhi Tariff Region itself and were placed in the ranking list, grant of promotion to the respondents no. 4 to 6 was contrary to the respondents' own policy for promotion.

The respondents no. 1 to 3 have contested the writ petition and filed a detailed reply thereto. They have submitted that the names of respondents no. 4 to 6 have been included in two promotion orders both dated 1st August, 1988 under the instructions of GIC(respondent no.1). Sufficient number of candidates were not available in the ranking list of Delhi Tariff Region prepared in the year 1987 to complete the quota of contingency list and therefore the matter was referred to the GIC which being their holding company is the ultimate policy making authority on the

matters relating to appointment and promotion for all subsidiary Insurance companies . The G.I.C. vide order dated 29th December, 1987 advised that in the year 1987 it has not been possible to draw up full main list and contingency list at Bombay, Calcutta and Delhi Regions for lack of sufficient candidates while there were surplus candidates even after drawing up both main and contingency list in Madras Tariff Region. It was advised that vacancies in the main list lying unfilled at Calcutta Region may be offered to the candidates on the contingency list from Madras or Bombay Regions. Similar action was also advised to be taken to offer unfilled vacancies in Delhi Tariff Region to the candidates in the contingency list and furthermore the surplus candidates in the southern region who could not be accommodated in the main or even contingency list may be offered an option to go on the contingency list of other three regions as there are not enough candidates in those regions to draw up the list of the required number.

The respondents submitted that it was in the aforementioned circumstances that the option was extended to the respondents no. 4 to 6 for being included in the contingency list of Delhi Tariff Region of the year 1987 which option was exercised by them. Even though their names were included in the list of the year 1987 but before they could be offered promotion, ranking list of the year 1988 was prepared and they were rightly included at the top of the ranking list of the year 1988 in terms of the provisions contained in Para 11 of the Policy. It was submitted that names of these three candidates were included in the contingency list of the year 1987 in Delhi Tariff Region on account of non-availability of

eligible candidates and they were required to be placed at the top of the ranking list in the following year. It was submitted that both respondents no. 4 and 6 have joined their respective posts but the respondent no. 5 did not join and consequently Shri K.S.Porwal included at serial No. 1 in the reserve of list dated 1st August, 1988 was promoted and he joined the post of promotion. It was therefore argued that promotions have been granted to respondents no. 4 to 6 against the vacancies of the year 1987 whereas the other candidates except respondents no. 4 to 6 included in the ranking list of the year 1988 did not have any claim on the vacancies of the year 1987.

The learned Single Judge in the impugned judgment held that since the respondents no. 4 to 6 placed in the ranking list of the year 1987 could not be accorded promotion in that year, they were therefore placed at the top in the ranking list of the year 1988 as per Para 46 of the Policy. It was also held that while the respondents no. 4 to 6 had the right to claim consideration for promotion against the vacancies of the year 1987, Shri K.S.Porwal, Shri C.Upadhyay, Mr. R.C. Verma and Mr.N.R.Bhalecha whose names were included while preparing the ranking list of the year 1988 were not the aspirants for the promotion in the year 1987 and they were not eligible for promotion in the year 1987. Learned counsel for the petitioner argued before the learned Single Judge that according to para 46 of the Promotion Policy, if the names of the candidates included in the main list are not offered promotion in a particular year, their names can be included in the ranking list of the next year at the top of the list. But such a course was not open to be adopted

in the case of the candidates who were included in the contingency list. While rejecting this argument, learned Single Judge held that para 42 of the Policy deals with the preparation of ranking list which provides that the list shall include such number of candidates equal to the number of the vacancies declared plus a number equal to 20% of the declared vacancies, to be kept in contingency list. It was held that so far as the main list is concerned, that list is equal to the vacancies available and therefore, carrying forward of the names of the main list to the next year's list does not arise. The contingency list may or may not be exhausted and therefore, the names appearing therein have to be included in the next year's list. The learned Single Judge further held that no distinction could be made between the names appearing in the main list or in the contingency list. The list is one and is prepared in the descending order of the marks obtained and the rank so gained by the candidates. The learned Single Judge therefore held that the inclusion of the names of respondents no. 4 to 6 at the top of the ranking list of the year 1988 does not suffer from any infirmity and therefore, dismissed the writ petition.

In assailing the judgment of the learned Single Judge, learned counsel for the appellant has argued that the judgment proceeds on the assumption that the vacancies determined in a particular year were required to be filled in the same year and not in the next year, whereas the fact in the present case is that the vacancies of the year 1987 were filled in the year 1988. The respondents no. 4 to 6 were actually promoted in the year 1988 vide two different orders (both dated 1st August, 1988.) Learned counsel further argued that the guidelines

conveyed by the GIC to the United India Insurance Company in the letter dated 29th December, 1987 would not create any right in favour of respondents no. 4 to 6 because this communication merely requires the respondents to fill up the vacancies of the year 1987 by giving promotion. But on the basis of such communication, transfer of employees can not be made from one region to another. It has been argued that para 46 of the Policy is applicable in respect of the main list and not to the contingency list. According to this para, ranking list once prepared by the Promotion Authority shall remain in force till it is re-placed by the next list. The learned Single Judge has erred in law in treating the main list and contingency list as one .

It has further been argued that even according to para 11 of the Policy a person from any region could be offered promotion in Delhi Tariff Region only if eligible candidates were not available in Delhi Tariff Region. In the present case, eligible persons were available in Delhi Tariff Region as is evident from the two Ranking lists both dated 1.8.1988 and have been included in the reserve but promotion could not be granted to them due to the candidates from other region. In support of his argument, Shri N.M.Lodha learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of Oriental Insurance Company vs. T.S.Sastry , reported in (2004) 1 SCC p.136 which we shall refer at the appropriate place hereinafter.

On the other hand, Shri M.S.Singhvi learned counsel for the respondents has supported the judgment passed by the learned Single

Judge and argued that Ex.9 dated 12.3.1987 is in fact the ranking list of the year 1987 prepared under para 30 of the Policy. It is the respondents who have produced on record the ranking list prepared under para 31 with their reply as Ex.R/2/2 dated 12th March, 1987. Both the lists are dated 12th March, 1987 but prepared under two different provisions. It would be evident from the ranking list of the year 1987 prepared under para 31 of the Policy that no person was included in the contingency list while preparing such a ranking list on 12th March, 1987 as there was no eligible and successful candidate in northern region to be included in the contingency list. Only because of this reason, the matter was referred to the GIC and the contingency list was latter notified vide notices dated 31.12.1987 which are Ex.R/2/3 and R/2/4. Guidelines contained in the communication dated 29th December,1987 were circulated under approval of the Chairman of the GIC. It was argued that transfer of 7 vacancies from para 30 to para 31 was clearly mentioned in Ex.9 but no-one raised any objection against this. These vacancies were transferred because of the non-availability of the candidates in reserve to fill up the vacancies under para 30. Since the respondents no. 4 to 6 exercised the option for being included in the ranking list of Delhi Tariff Region, their names were so included.

In response to the argument on behalf of the appellant that eligible persons were available in Delhi Tariff Region itself, it has been submitted that out of three names mentioned in the petition who have passed the written test, the name of Ashok Kumar finds place in the ranking list at serial no. 4 prepared under para 31. As the other two

candidates namely Shri D.K.Chhabra and Kumari Prem Sethi did not secure minimum marks required for being eligible to be included in the ranking list as per para 31 of the Policy, their names could not have been included in the contingency list of the year 1987. Shri M.S.Singhvi thus argued that the judgment passed by the learned Single Judge does not suffer from any infirmity and prayed that the special appeal may be dismissed.

We have given our thoughtful consideration to the arguments advanced by both the learned counsels and carefully perused the record.

The Promotion Policy of the year 1986 in para 11 clearly provided that employees, who have been included in the ranking list of a particular region but have not been promoted due to non-availability of vacancies in that region, may be allowed to give an option to fill up the vacancies of AAO lying unfilled in another region due to non-availability of successful promotees in that region. Ranking list of the Delhi Tariff Region has been placed on record by the respondents with their reply as Ex.R/2/2 dated 12th March, 1987. A bare perusal of the same makes it clear that in both the list pertaining to the general category and S.C/S.T. category, no names were included in the reserve and thus, originally no contingency list was prepared . According to para 42 of the Promotion Policy, for being ranked the candidate must secure at least 40 marks(30 marks in case of SC/ST candidates). It has been provided that ranking list shall include such number of candidates equal to the number of the

vacancies declared plus a number equal to 20% of the declared vacancies, to be kept in contingency list from which the promotion can be made as and when required before formation of the next Promotion Committee. It further provides that entire list of candidates shall be in the descending order of total marks gained by the candidates on all counts of Seniority, Qualifications, Work record and Interview. Because there was no eligible candidate available for being included in the contingency list of the year 1987 in Delhi Tariff Region, the G.I.C. conveyed their guidelines by letter dated 29th December,1987 to United India Insurance Company that since it has not been possible to draw up the full main list and contingency list at Bombay, Calcutta and Delhi Regions for lack of sufficient candidates while there are surplus candidates even after drawing up of main and contingency list for Madras Tariff Region, it was therefore advised that vacancies in the main list lying unfilled at Calcutta Region may be offered to the candidates on the contingency list from Madras or Bombay Region. Since the respondents no. 4 to 6 were already in the contingency list of the Madras Tariff Region, they were allowed to exercise option and they did so for inclusion of their names in the contingency list of the year 1987. Accordingly, their names were placed in reserve for contingency of the ranking list of the year 1987 of Delhi Tariff Region as is evident from the two notices (both dated 31.12.1987) available on record as Ex.R/2/3 and R/2/4. According to para 46 of the Promotion Policy, the ranking list once published by the Promoting Authority shall remain in force till it is replaced by the next list and the candidates on the list shall be offered promotion up to the time the list is in force. Candidates who have not been offered promotion during this

period will be placed at the top of the next ranking list.

There was some confusion at the bar and which has also persisted in the impugned judgment where the learned Single Judge has treated the contingency list distinct from the ranking list . In order to examine correctness of this conclusion, we may analyze relevant paras of the Promotion Policy especially its paras 42, 44 and 46 which for the facility of reference are reproduced hereunder:-

> "42. For being ranked the candidate must secure at least 40 marks(30 marks in case of SC/ST candidates) in the aggregate.
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> The list referred to shall include the number of candidates equal to the number of vacancies declared for the purpose of immediate posting and promotion against the declared vacancies plus a number equal to 20% of the declared vacancies to be kept as Contingent List for which the promotions can be made if and when required before the formation of the next Promotion Committee. The entire list of candidates shall be in the descending order of the total marks gained by the candidates on all counts of Seniority, Qualifications, Work Record and Interview. Selection for promotion shall be made in order of the rank so gained.
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> 44. On receipt of the recommendations of the Promotion Committee the Promoting Authority shall examine the recommendation and pass appropriate orders. Where the Promoting Authority is unable to accept the recommendations of the Committee, it shall record in writing the reasons for disagreeing with the recommendations of the Committee and pass such orders as it may deem fit. Thereafter, the Promoting Authority shall cause the publication of the Ranking List, which shall include 20% reserve for contingencies.
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> 46. The ranking list once published by the Promoting Authority shall remain in force till it is replaced by the next list and the candidates on the list shall be offered promotion

> upto the time the list is in force. The candidates who have not been offered promotions during this period will be placed on the top of the next ranking list."

In our view the cumulative reading of paras 42, 44 and 46 of the Policy would clearly show that only one ranking list is to be prepared for the purpose of posting and promotion against the declared vacancies which should also include a number equal to 20% of the declared vacancies, to be kept in contingency list from which promotion can be made as and when required before formation of the next Promotion Committee. In fact, para 42 makes it further clear by providing that entire list of candidates shall be in descending order of the total marks gained by the candidates and selection for promotion shall be made in the order of rank so given. Para 44 of the Policy provides that Promotion Committee shall cause publication of the ranking list which shall include 20% reserve for contingency. This has been further made clear by para 46 which provides that ranking list once published by the Promoting Authority shall remain in force till it is replaced by the next list and the candidates shall on the list shall be offered promotion up to the time the list is in force. Unlike in the case of different Service Rules, the Promotion Policy in question does not provide for preparation of a separate selection list and waiting list. In this view of the matter, once when contingency list in which the names of respondents no. 4 to 6 were placed formed integral part of the ranking list, they having not been offered promotion during the year 1987, according to para 46 of the Policy were liable to be placed at the top of the next ranking list.

In fact twin arguments of the appellants that (i) main list and contingency list cannot be treated as one and (ii) that names including only in main list and not in the contingency list can be included at the top in the ranking list of next year run contrary to the appellant's own pleadings in the present special appeal wherein while assailing the judgment of the learned Single Judge in ground (viii) on page 11 of appeal it has been stated as under :-

> "A bare perusal of the order passed by the learned Single Judge would show that some mis-impression has been created about the contingency list and the ranking list. So also in main list. According to clause 46, ranking list once published by the Promotion Authority shall remain in force till it is replaced by the next. Ranking list means a list wherein the name of the persons who have been given promotion and the names of the persons who are kept in reserve/contingency list are included. A combined list of the persons who are promoted and are kept in reserve/contingency is called the ranking list. According to clause 46, it is clear that if a name of a persons is included in the contingency list and on account of non-availability of vacancy if he is not given promotion, then in the next list, he will be kept on top."

We therefore reject the argument of the appellants that the names included in the contingency list would not be treated as having been included in the ranking list and that such names could not be placed at the top of the next ranking list. The learned Single Judge in our view was not correct in dividing the ranking list into two parts by referring to them as main list and waiting list and further by observing that since main list would be prepared equal to the number of vacancies available and thus assumed that it would always be exhausted and therefore, it is only the names included in the contingency list which would be carried forward

to the next year list. With great respect, we do not agree with this interpretation which according to us is not warranted on harmonious construction of paras 42,44 and 46 of subject Promotion Policy.

We have also gone through the judgment of the Hon'ble Supreme Court relied upon by Mr.N.M.Lodha leaned counsel for the appellant in the case of Oriental Insurance Co.Ltd. vs. T.S.Sastry(supra). In this judgment, the question before the Apex Court was whether promotion could be offered to the candidate included in the ranking list prepared during the year 1984 whereas such candidate according to para 14 of Promotion Policy in that case was included in the contingency list required to be prepared as per similar provision in that case. Promotion of the respondent was resisted by the Oriental Insurance Company on the ground that vacancies were created in November,1984 and May, 1985 therefore the candidates included in the contingency list of previous year could not be promoted. The Andhra Pradesh High Court allowed the petition filed by such candidate who was claiming promotion on the basis of inclusion of his name in the contingency list. Under challenge before the Supreme Court was the judgment of the High Court and their Lordships in para 10 of the judgment while agreeing with the view taken by the High Court categorically held that the appellant Oriental Insurance Company acted mala fide in depriving the respondents his legitimate claim for promotion. This judgment in our view does not in any manner help the appellant.

In view of the aforesaid discussion, we do not find any merit

in this appeal and the same is hereby dismissed. There shall be no order as to costs.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-